

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MOTEL INN, LLC,	)	NO. CV 20-11720 KS
)	
Plaintiff,	)	MEMORANDUM OPINION AND ORDER
	)	RE: DEFENDANTS’ MOTION TO (1)
v.	)	DISMISS FOR LACK OF PERSONAL
	)	JURISDICTION PURSUANT TO FRCP
9223-6678 QUEBEC INC., et al.,	)	12(b)(2); (2) DISMISS, OR, IN THE
	)	ALTERNATIVE, TRANSFER THE ACTION
Defendants.	)	FOR IMPROPER VENUE PURSUANT TO
<hr/>	)	FRCP 12(b)(3); AND (3) DISMISS FOR
	)	FAILURE TO STATE A CLAIM AGAINST
	)	DEFENDANTS STEVEN CLEMENT AND
	)	GUILLAUME LANGEVIN PURSUANT TO
	)	FRCP (12)(b)(6)

I. INTRODUCTION

On July 14, 2020, Plaintiff Motel Inn, LLC (“Plaintiff”) filed a complaint in the Superior Court of the State of California, County of San Luis Obispo, asserting breach of contract and related claims against 9223-6678 Quebec, Inc., d.b.a Nomad Airstream; Steven Clement, an individual; Guillaume Langevin, an individual; and Does 1-23, inclusive (collectively, “Defendants”) (the “Complaint”). (Dkt. No. 1.) On September 8, 2020, Defendants removed

1 the action to the Central District of California based on diversity jurisdiction. (*See* Dkt. No.
2 1, Notice of Removal.) On September 10, 2020, the Central District remanded the case to
3 state court on the ground that Defendants’ allegations regarding Plaintiff’s citizenship were
4 insufficient to invoke diversity jurisdiction. (*Id.*) On December 29, 2020, after obtaining
5 Plaintiff’s responses to limited jurisdiction discovery, Defendants filed a Second Notice of
6 Removal to the Central District based on diversity jurisdiction. (Dkt. No. 1.) On January 5,
7 2021, Defendants filed a Notice of Motion and Motion to Dismiss (1) for Lack of Personal
8 Jurisdiction (FED. R. CIV. P. 12(b)(2)); (2) to Dismiss for Improper Venue (FED. R. CIV. P.
9 12(b)(3)); and (3) to Dismiss Plaintiff’s Complaint Against Steven Clement and Guillaume
10 Langevin (FED R. CIV. P. 12(b)(6)), along with the Declarations of Matthew C. Wolf (“Wolf
11 Decl.”), Guillaume Langevin (“Langevin Decl.”), and Steven Clement (“Clement Decl.”)
12 (together, the “Motion”). (Dkt. No. 6.)

13
14 On January 14, 2021, the parties consented to proceed before the undersigned United
15 States Magistrate Judge for final disposition. (Dkt. Nos. 8-10.) On January 15, 2021, the
16 Court issued an Initial Order in this action. (Dkt. No. 11.) On January 20, 2021, Plaintiff filed
17 an Opposition to the Motion (Dkt. No. 12 (the “Oppo.”)), along with Declarations of Damien
18 Mavis (Dkt. No. 13 (“Mavis Decl.”)) and Chase W. Martins (Dkt. No. 14 (“Martins Decl.”)).
19 On January 27, 2021, Defendants filed a Reply. (Dkt. No. 16.) On February 10, 2021, the
20 Court held oral argument on the Motion and took the matter under submission for decision.
21 (Dkt. No. 22.)

22
23 For the reasons outlined below, Defendants Motion to Dismiss this Action for Lack of
24 Personal Jurisdiction pursuant to Rule 12(b)(2) is DENIED; Defendant’s Motion to Dismiss
25 the Action for Improper Venue pursuant to Rule 12(b)(3) is DENIED; Defendants’ request to
26 transfer this action to the Northern District of New York pursuant to 28 U.S.C. § 1404(a) is
27 GRANTED; and Defendants’ Motion to Dismiss Plaintiff’s Complaint Against Steven
28 Clement and Guillaume Langeven pursuant to FRCP 12(b)(6) is DENIED, without prejudice.

II. THE COMPLAINT

A. The Parties

Plaintiff is a California limited liability company with its principal place of business in San Luis Obispo County and was formed for the purpose of remodeling the former Milestone Inn located in the city of San Luis Obispo, California (the “Project”). (Complaint ¶ 1.) The Milestone Inn was the first motel in the United States. (*Id.*) Defendant 9223-6678 Quebec, Inc., d.b.a Nomad Airstream (a.k.a. Custom Airstream) (“Custom Airstream”) is now and was at all relevant times, a company registered in Quebec, Canada, and “is in the business of customizing and rehabilitating Airstream trailers for businesses and individuals located throughout California, the United States, and other countries.” (*Id.* at ¶ 2.) Defendant Steve Clement (“Clement”) resides in Montreal, Quebec and is alleged to be “a president, first shareholder, and agent of Defendant Custom Airstream.” (*Id.* at ¶ 3.) Defendant Guillaume Langevin (“Langevin”) also resides in Montreal Quebec and is alleged to be “a president, second shareholder, and agent of Defendant Custom Airstream.” (*Id.* at ¶ 4.)

B. Factual Allegations

The Complaint alleges that on or about August 24, 2017, Defendants entered into a Service Agreement dated August 23, 2017 (the “Agreement”)¹, in which Defendant Custom Airstream agreed to “customize 26 Airstream travel trailers into hotel rooms” and Plaintiff agreed to pay a fixed price of \$80,000 USD per unit totaling \$2,080,000.00 USD for Defendant Custom Airstream’s services. (*Id.* at ¶ 8.) The Agreement was divided into six payments: a \$30,000 initial payment by Motel Inn upon signing the Agreement; the second through sixth

¹ A copy of the Agreement is attached as Exhibit A to the Complaint and may be considered without converting the motion to dismiss into a motion for summary judgment. *United States v. Ritchie*, 342 F.3d 903, 907-08 (9th Cir. 2003) (court may consider “documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice – without converting the motion to dismiss into a motion for summary judgment”).

1 payments of \$410,000.00 each “to be paid by Motel Inn beginning 30 days after the
2 [Agreement] was signed and continuing at various intervals until all 26 trailers were delivered
3 on January 5, 2019.” (*Id.*)
4

5 Under the Agreement, “Defendants were obligated to provide finalized drawings and
6 remodeling plans of each Airstream unit to Motel Inn for Plaintiff to approve.” (*Id.* at ¶ 9.)
7 Plaintiff “made the initial \$30,000 payment on or about August 24, 2017, Defendant accepted
8 the funds, retained the payment, but never submitted any finalized “written drawings or plans
9 to Motel Inn for approval.” (*Id.*) According to the Complaint, after Plaintiff made the initial
10 \$30,000 payment, Plaintiff had financing delays related to the remodeling project and when
11 Plaintiff informed Defendants of these delays, “Defendants suspended the [Agreement] but
12 also requested that Motel Inn make a series of smaller payments than what was called for in
13 the [Agreement] ostensibly to allow Defendants to continue working on the remodeling
14 project.” (*Id.* at ¶ 10.) Plaintiff then made six additional payments to Defendants: \$150,000
15 on September 26, 2017; \$71,000 on December 9, 2017; \$30,000 on February 23, 2018;
16 \$60,000 on March 16, 2018; \$45,760.50 on April 18, 2018; and \$50,000 on October 2, 2018.
17 (*Id.*) Plaintiff alleges it has paid Defendants a total of \$436,760.50 in connection with the
18 remodeling project and provided Defendants “with a 2017 Airstream trailer shell valued at
19 \$53,257.00” that was “sent to Defendants at [Plaintiff’s] expense on or about September 26,
20 2017.” (*Id.* at ¶ 11.)
21

22 Plaintiff avers that the cash payments and the value of the Airstream trailer represent
23 total payments to Defendants in the amount of \$490,017.50, but Defendants have not delivered
24 finalized written plans and drawing for Plaintiff’s approval, have not delivered any invoicing
25 or records of work they have performed under the Agreement, and have not “completed any
26 Airstream trailers.” (*Id.*) According to Plaintiff, Defendants “have not procured any
27 Airstream trailers for [Plaintiff’s] project or completed any work for [Plaintiff] despite having
28 received substantial payments made by [Plaintiff].” (*Id.*) On October 5, 2018, Plaintiff

1 notified Defendants that Plaintiff would not make any more payments on the Agreement “until
2 Defendants performed their obligations under the contract with the substantial payments they
3 had already received, and dependable financing was available.” (*Id.* at ¶ 12.) Plaintiff
4 maintains that since October 2018, Defendants still have not provided an invoice or record of
5 work performed under the Agreement and “have not started work on any Airstream trailer
6 remodels.” (*Id.*)

7
8 On June 17, 2020, Defendants delivered a letter to Plaintiff terminating the [Agreement]
9 and “asserting that [Plaintiff] still owed a balance of \$1,708,239.50 on the [Agreement].” (*Id.*
10 at ¶ 13.) On June 22, 2020, Plaintiff sought clarification from Defendants regarding their
11 position on the status of the Agreement and Defendants responded that Plaintiff owed the
12 \$1,708,239.50 balance on the Agreement, even though Defendants had not performed any of
13 their obligations under the Agreement. (*Id.* at ¶ 14.) Plaintiff alleges it “paid Defendants
14 \$436,760.50 and delivered an Airstream trailer to Defendants but has received nothing from
15 Defendants.” (*Id.* at ¶ 15.)

16
17 Plaintiff asserts four causes of action against Defendants: (1) breach of contract; (2)
18 unjust enrichment; (3) money had and received; and (4) declaratory relief. (*Id.* at ¶¶ 16-33.)

19 20 **C. Allegations re: Jurisdiction and Venue**

21
22 As noted Plaintiff commenced this action in California Superior Court, County of San
23 Luis Obispo. Plaintiff alleges that “[j]urisdiction and venue [were] appropriate in San Luis
24 Obispo County Superior Court because Defendants have engaged in substantial business
25 operations in the County of San Luis Obispo” and the contract at issue “was entered into and
26 to be fulfilled in the City of San Luis Obispo, California.” (*Id.* at ¶ 7.)

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1 Plaintiff contends that “Defendants’ contacts, ties, and relations with San Luis Obispo
2 County, and the contract amount in controversy of \$2,080,000.00 make jurisdiction and venue
3 appropriate in San Luis Obispo County Superior Court.” (*Id.*)

4 5 **III. THE MOTION**

6 7 **A. Defendants’ Arguments**

8
9 Defendants move to dismiss the Complaint for lack of personal jurisdiction pursuant to
10 Rule 12(b)(2); to dismiss for improper venue pursuant to Rule 12(b)(3) or, in the alternative
11 to transfer the action; and to dismiss the action for failure to state a claim against individual
12 defendants Clement and Langevin pursuant to Rule 12(b)(6). Defendants argue that personal
13 jurisdiction does not exist in California for Defendants because Defendants do not transact
14 business in California and Plaintiff’s claims against Defendants do not arise from Defendants’
15 activities in California. (Motion at 3.) Specifically, Defendants contend that Plaintiff has not
16 alleged any facts that establish that Defendants are “present, domiciled or consented to
17 jurisdiction in California” or that “Defendants have any permanent and continuous contacts
18 with California.” (*Id.* at 8.) Defendants further argue that Plaintiff’s allegation that Custom
19 Airstream provides customizing and rehabilitation services for “businesses and individuals
20 located throughout California, the United States, and other countries” is conclusory and
21 insufficient to confer personal jurisdiction over Defendants. (*Id.* at 9.)

22
23 Defendants offer declarations of Langevin, Clement, and Wolf to confirm that
24 individual defendants Clement and Langevin are residents and domiciled in Quebec, Canada
25 and Custom Airstream is incorporated and has its principle place of business in Quebec,
26 Canada. (Motion at 9 (*citing* Langevin Decl. ¶¶ 1-2; Clement Decl. ¶¶ 1-2; Wolf Decl., Ex. 1,
27 ¶¶ 2-4).) Defendants argue that Custom Airstream “does not purposefully solicit business or
28 advertise its services in California.” (Motion at 9.) Defendants maintain that “Custom

1 Airstream has only had two customers in California, including Plaintiff, out of the 40
2 customers it has serviced over the past three years.” (*Id.*) Defendants maintain that the
3 Agreement “is the sole contact purportedly supporting personal jurisdiction in California.”
4 (*Id.* at 3.) Defendants urge that “the lack of jurisdiction requires the Court to dismiss the
5 Complaint as it otherwise would offend the Due Process Clause of the Fourteenth
6 Amendment.” (*Id.*)

7
8 In addition, Defendants request that if the matter is not dismissed entirely for improper
9 venue, that this Court transfer the lawsuit to the Northern District of New York consistent with
10 the Agreement’s forum selection clause, pursuant to 28 U.S.C. § 1404(a). Defendants argue
11 that Plaintiff has waived the exercise of personal jurisdiction in California because the
12 Agreement’s forum selection clause expressly requires that “[p]roper legal venue for all
13 matters related to this Agreement is agreed as the closest to Albany, New York.” (Motion at
14 10 (*citing* Langevin Decl. ¶ 34).) Defendants also emphasize that “all of the material witnesses
15 and associated records that pertain to Plaintiff’s claims are primarily located in Quebec,
16 Canada” where Defendants’ business is located. (Motion at 4.)

17 18 **B. Plaintiff’s Arguments**

19 Plaintiff acknowledges that “he does not yet know whether Defendants’ contacts with
20 California are sufficient to establish general jurisdiction over them.” (*Oppo.* at 6.) However,
21 Plaintiff maintains that Defendants have sufficient contacts with California to subject them to
22 specific jurisdiction in the Central District of California. (*Id.* at 8.) First, Plaintiff argues that
23 Defendants purposely availed themselves of the privilege of conducting business in the forum
24 state by “marketing and selling custom Airstream trailers in California” and thereby “creating
25 a continuing relationship with Plaintiff.” (*Id.* at 9.) Specifically, Plaintiff argues that for
26 claims arising in contract, when determining whether a defendant has reached into a forum
27 state sufficiently to satisfy the “purposeful availment” analysis, courts may consider “prior
28

1 negotiations and contemplated future consequences, along with the terms of the contact and
2 the parties' actual course of dealings." (*Id.* at 9 (*citing Burger King v. Rudzewicz*, 471 U.S.
3 462, 473 (1985)).)

4
5 Plaintiff argues that Defendant's website activity forms a basis for jurisdiction in
6 California because Defendants "advertise their services in California on a website accessible
7 to Plaintiff and other citizens of California"; the website "invites potential customers in
8 California to 'contact them' via the website, email or phone in order to obtain business from
9 California and other states"; the website "depicts two 'projects' associated with the state of
10 California as examples of the work they do to customize Airstream trailers," one in San
11 Francisco and Plaintiff's Motel Inn project." (*Id.* at 9.) Plaintiff emphasizes that the
12 Agreement terms "contain provisions demonstrating Defendants' anticipated contacts with
13 Plaintiff and California." (*Id.* at 9-10.) Based on these facts, Plaintiff argues that the claim at
14 issue arises out of Defendants' forum-related activities and thus satisfies the second prong of
15 the specific jurisdiction analysis. (*Id.* at 11.) Finally, Plaintiff argues that, applying seven
16 factors outlined in *Sinatra v. National Enquirer*, 854 F.2d 1191, 1199-1202 (9th Cir. 1988),
17 the exercise of jurisdiction over Defendants in this case is reasonable. (*Id.* at 7.)

18 19 **C. Defendant's Reply**

20 In their Reply, Defendants maintain that they have not purposefully availed themselves
21 of the privilege of conducting business in California and "this Court's exercise of jurisdiction
22 of Defendants offends notions of fair play and substantial justice of the Due Process Clause."
23 (Reply at 1.) Defendants contend that Plaintiff fails to make a prima facie showing that the
24 Court has jurisdiction over Defendants, stressing that they have not performed any affirmative
25 conduct in California. (*Id.* at 2-5.) Defendants insist that all of their obligations under the
26 Agreement were to be performed in Canada, not California, and the termination of the
27
28

1 Agreement, which is the basis for Plaintiff's claim in this lawsuit, occurred in Quebec,
2 Canada. (*Id.* at 6.)

3
4 Further, Defendants argue that based on the Agreement's forum-selection clause,
5 Plaintiff has waived the exercise of personal jurisdiction in California and the Complaint
6 should be dismissed for improper venue. (*Id.* at 7-8.) In the alternative, Defendants argue that
7 Plaintiff cannot disregard the forum selection clause in the Agreement and they ask that the
8 Court transfer case to the Northern District of New York. (*Id.*) Finally, Defendants reiterate
9 their arguments that Plaintiff's claims against individual defendants Clement and Guillaume
10 should be dismissed for failure to state a claim under Rule 12(b)(6) because these defendants
11 are not parties to the Agreement and Plaintiff has not alleged they were alter egos of Custom
12 Airstream, which would be necessary to state a claim against these individuals. (*Id.* at 9.)

14 **IV. APPLICABLE LEGAL STANDARDS**

15
16 Federal Rule of Civil Procedure 12(b)(2) and 12(b)(3), respectively, provide that a party
17 may assert the defenses of lack of personal jurisdiction and improper venue by motion. FED.
18 R. CIV. P. 12(b)(2), (3).

20 **A. Personal Jurisdiction**

21
22 When a defendant moves to dismiss a complaint for lack of personal jurisdiction, the
23 plaintiff bears the burden of demonstrating that jurisdiction is proper. *Sher v. Johnson*, 911
24 F.2d 1357, 1361 (9th Cir. 1990). When the motion is based on written materials rather than
25 an evidentiary hearing, as is the case here, "the plaintiff need only make a prima facie showing
26 of jurisdictional facts." *Id.* Thus, the Court need "only inquire into whether [the plaintiff's]
27 pleadings and affidavits make a prima facie showing of personal jurisdiction." *Caruth v. Int'l*
28 *Psychoanalytical Ass'n*, 59 F.3d 126, 128 (9th Cir. 1995). While a plaintiff cannot "simply

1 rest on the bare allegations of [the] complaint,” *Amba Mktg. Sys., Inc. v. Jobar Int’l, Inc.*, 551
2 F.2d 784, 787 (9th Cir. 1977), the court must take as true uncontroverted allegations in the
3 complaint. *Am. Tel. & Tel. Co. v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 588 (9th Cir.
4 1996). Any conflicts between the parties about statements contained in affidavits must be
5 resolved in the plaintiff’s favor. *Id.*; see *Bancroft & Masters, Inc. v. Augusta Nat’l, Inc.*, 223
6 F.3d 1083, 1087 (9th Cir. 2000) (“Because the prima facie jurisdictional analysis requires us
7 to accept the plaintiff’s allegations as true, we must adopt [the plaintiff’s] version of events
8 for purposes of this appeal.”).

9
10 If, as here, there is no federal statute governing personal jurisdiction, the district court
11 must apply the law of the state in which the district court sits. FED. R. CIV. P. 4(k)(1)(A);
12 *Panavision Int’l, L.P. v. Toeppen*, 141 F.3d 1316, 1320 (9th Cir. 1998). California’s long-arm
13 jurisdictional statute is coextensive with the federal due process requirements. *Panavision*,
14 141 F.3d at 1320 (citing CAL. CIV. PROC. CODE § 410.10 (“A court of this state may exercise
15 jurisdiction on any basis not inconsistent with the Constitution of this state or of the United
16 States.”)). Thus, the jurisdictional analyses under California state law and federal due process
17 are the same. For a court to exercise jurisdiction over a nonresident defendant, the defendant
18 must have sufficient “minimum contacts” with the district such that the exercise of jurisdiction
19 “does not offend traditional notions of fair play and substantial justice.” *Int’l Shoe Co. v.*
20 *Washington*, 326 U.S. 310, 316 (1945).

21
22 A federal court may exercise either general or specific jurisdiction over a nonresident
23 defendant. *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 414 n.8-9 (1984).
24 General jurisdiction applies when a defendant’s activities in the state are “substantial” or
25 “continuous and systematic,” even if the cause of action is unrelated to those activities. *Data*
26 *Disc, Inc. v. Sys. Tech. Assocs., Inc.*, 557 F.2d 1280, 1287 (9th Cir. 1977) (internal quotations
27 omitted). If general jurisdiction is inappropriate, a court may exercise specific jurisdiction if
28 the defendant has sufficient contacts with the forum state in relation to the cause of action. *Id.*

B. Venue

Rule 12(b)(3) states that a party may move to dismiss a case for “improper venue.” These provisions authorize dismissal only when venue is “wrong” or “improper” in the forum in which it was brought. *Atl. Marine Constr. Co., Inc. v. U.S. Dist. Ct. for W. Dist. of Tex.*, 571 U.S. 49, 50-51 (2013). The determination of whether venue is “wrong” or “improper” is generally governed by 28 U.S.C. § 1391, which provides that “[e]xcept as otherwise provided by law . . . this section shall govern the venue of all civil actions brought in district courts of the United States.” 28 U.S.C. § 1391(a)(1). The statute further provides that “[a] civil action may be brought in —(1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located; (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or (3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action. 28 U.S. C. § 1391(b)(1)-(3).

A forum selection clause may be enforced through a motion pursuant to 28 U.S.C. §1404(a), which states, “[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented.” 28 U.S.C. § 1404(a). In a diversity action, federal law governs the enforceability of forum selection clauses. *Manetti-Farrow, Inc. v. Gucci Am., Inc.*, 858 F.2d 509, 513 (9th Cir. 1988). The United States Supreme Court has held that § 1404(a) and the doctrine of *forum non conveniens* are the appropriate mechanisms to enforce a forum selection clause. *Atl. Marine*, 571 U.S. at 61.

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1 A forum selection clause is presumptively valid and will not be set aside unless the
 2 party challenging its enforcement demonstrates that the forum selection clause is unreasonable
 3 or fundamentally unfair. *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 593-95 (1991);
 4 *Chan v. Soc’y Expeditions, Inc.*, 123 F.3d 1287, 1295 (9th Cir. 1997). A party challenging a
 5 forum selection clause bears a “heavy burden of showing that trial in the chosen forum would
 6 be so difficult and inconvenient that the party would effectively be denied a meaningful day
 7 in court.” *Argueta v. Banco Mexicano, S.A.*, 87 F.3d 320, 325 (9th Cir. 1996).

8 9 **V. DISCUSSION**

10 11 **A. Defendants’ Contacts with the Forum Are Sufficient to Support the** 12 **Exercise of Specific Personal Jurisdiction**

13 First, Plaintiff is correct that Defendant’s Motion only discusses general jurisdiction.
 14 (*See* Motion at 8.) Indeed, the factual record presented here does not establish any pattern of
 15 general and/or continuous contacts between Montreal-based Defendants and California
 16 sufficient to support the exercise of general jurisdiction. Plaintiff acknowledges as much. (*See*
 17 *Oppo*. at 6.) However, that is not the end of the inquiry. The Court must consider whether
 18 Plaintiff has presented facts sufficient to support the exercise specific personal jurisdiction
 19 over Defendants. Thus, the Court considers whether Plaintiff has met his burden to present
 20 sufficient facts to establish that: (1) Defendants’ purposefully availed themselves of the
 21 privilege of doing business in California ; (2) the claims arise out of Defendants’ forum-related
 22 activities; and (3) the exercise of jurisdiction would be reasonable. *Roth v. Garcia Marquez*,
 23 942 F.2d 617, 620-21 (9th Cir. 1991). As noted above, California’s long-arm jurisdictional
 24 statute is coextensive with the federal due process requirements. *Panavision*, 141 F.3d at 1320
 25 (*citing* CAL. CIV. PROC. CODE § 410.10). Consequently, the jurisdictional analyses under
 26 California state law and federal due process are the same.

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1. Purposeful Availment

With respect to purposeful availment, the Court is unpersuaded that the mere *existence* of Defendants' website, with depictions of a single project in San Francisco and the contemplated Motel Inn project in San Luis Obispo, California, are evidence of Defendants purposefully conducting activities *in* California. Indeed, the evidence indicates that visitors to Defendants' website were directed to reach out to *Defendants* for further information, rather than the other way around. (Oppo. at 4.) There is no evidence that Defendants conducted any direct business within California through the website. Further, the fact that Plaintiff delivered a single Airstream trailer *to Defendants* in Quebec also does not establish that Defendants purposely availed themselves of the privilege of conducting business in California. Plaintiff's assertion that "Defendants have transacted substantial business with Plaintiff" in California is not supported by the evidence. (*Id.* at 11.)

However, the evidence indicates that Defendants had extensive communications with Plaintiff in California while negotiating the Agreement terms and that Defendants drafted the Agreement and provided it to Plaintiff for signature. (Oppo. at 11; *see also* Mavis Decl. ¶¶ 7, 11.) The parties also had numerous communications in connection with three amendments to adjust the Agreement payment terms when Plaintiff experienced delays in obtaining its financing. (Motion at 5-6.) Plaintiff, relying on *Roth v. Garcia Marquez*, argues that Defendants purposefully availed themselves of the privilege of conducting business in California through the history of negotiations between Defendants and Plaintiff, as well as the fact that the Agreement would have required Defendants not only to deliver the 26 Airstream trailers to California, but Defendants would have been obligated to provide ongoing assistance and maintenance services to the completed Airstream trailers in California. (*See* Oppo. at 10.) According to Plaintiff, the history of the parties' negotiations coupled with the consequences of the Agreement are sufficient to demonstrate the Defendants purposefully availed themselves of the privilege of doing business in California. The Court agrees.

1 In *Roth*, a filmmaker plaintiff who resided in California filed a breach of contract action
2 in the Central District of California against the defendant author, who resided in Mexico, and
3 his literary agent, a resident of Barcelona, Spain. See *Roth*, 942 F.2d at 619. The filmmaker
4 alleged that the author and his agent breached an agreement to sell the plaintiff film rights to
5 Gabriel Garcia Marquez’s novel, *Love in the Time of Cholera*. *Id.* The defendants moved to
6 dismiss the complaint for lack of personal jurisdiction. *Id.* at 18. The district court denied the
7 motion to dismiss and Ninth Circuit affirmed. *Id.*

8
9 In addressing the purposeful availment analysis for specific jurisdiction, the Ninth
10 Circuit first noted, “[i]t is important to distinguish contract from tort actions.” *Id.* at 621. The
11 Court acknowledged that interstate communications, e.g., faxes, email, and telephone calls
12 alone do not qualify as “purposeful activity” sufficient to invoke the benefits and protection
13 of the forum state. *Id.* at 622 (citing *Peterson v. Kennedy*, 771 F.2d 1244, 1262 (9th Cir.
14 1985)). But the Court concluded that a broader issue—namely, the “the future consequences
15 of the contract”—must also be considered. *Id.* Thus, despite the defendants’ “minimal
16 physical presence in the forum” and the fact that the *plaintiff* made the initial solicitation,
17 because “most of the work would have been performed in California” and “most of the future
18 of the contract would have centered on the forum,” the Ninth Circuit found “there was enough
19 purposeful availment here to compel a finding of jurisdiction on this prong.” *Id.* *Roth* is
20 instructive here.

21
22 After considering Plaintiff’s evidence of the parties’ extensive negotiations and
23 communications for the Motel Inn project, along with Defendants’ ongoing obligations to
24 perform services under the Agreement in California, the Court concludes that, like in *Roth*,
25 this is a “very close call,” but there is sufficient evidence of purposeful availment to support
26 specific personal jurisdiction. *Id.*

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2. Arising from Forum-Related Activities

As to the second prong, it is clear that the claim arises out of the Agreement, which was negotiated and signed by Plaintiff, who was in California throughout the negotiations and subsequent amendments. Defendants do not dispute that they had extensive communications with Plaintiff regarding the Agreement's terms and amendments, but insist that these communications do not constitute forum-related activities. (Reply at 4-6.) Defendants also argue that the breach of the Agreement "exclusively occurred in Quebec, Canada." (*Id.* at 6.) Defendants contend that "any alleged breach of the Agreement could not have occurred in California since Custom Airstream's performance under the Agreement strictly took place in Quebec, Canada." (*Id.*) Defendants appear to take an exceedingly narrow view of activities leading to the alleged breach and wholly ignore the parties' course of dealings leading up to the Agreement and its subsequent amendments. Accordingly, the Court finds that the claim at issue does indeed arise from forum-related activities and Plaintiff has sufficiently established the second prong of the specific jurisdiction analysis.

3. Reasonableness

Even when the first two requirements for personal jurisdiction over a defendant are satisfied, the court may not exercise jurisdiction unless to do so would be reasonable. *Ziegler v. Indian River Cnty.*, 64 F.3d 470, 474-75 (9th Cir. 1885) ("Even if the first two prongs are satisfied, an unreasonable exercise of jurisdiction violates the Due Process clause."). In the opening brief, Defendants focus exclusively on the requirements of general jurisdiction and do not address the "reasonableness" elements of specific jurisdiction. (*See* Motion at 1-9.) Indeed, in the Reply, Defendants argue "there is no need to analyze reasonableness under the third prong of the test" because, according to Defendants, "Plaintiff failed to meet its prima facie burden to establish specific jurisdiction over Defendants." (Reply at 7.) As outlined above, the Court has determined that Plaintiff met its burden, albeit just, to demonstrate

purposeful avilment by Defendants and that the lawsuit arises out of Defendants' forum-related activities. Therefore, despite Defendants' arguments to the contrary, the Court must consider reasonableness for purposes of its due process analysis.

The Ninth Circuit has set out seven factors to consider when determining whether the exercise of jurisdiction over a nonresident defendant meets the reasonableness test: (1) the extent of the defendant's purposeful interjection into the forum state's affairs; (2) the burden on the defendant; (3) conflicts of law between the forum and defendant's home jurisdiction; (4) the forum's interest in adjudicating the dispute; (5) the most efficient judicial resolution of the dispute; (6) the plaintiff's interest in convenient and effective relief; and (7) the existence of an alternative forum. *Terracom v. Valley Nat'l Bank*, 49 F.3d 555, 561 (9th Cir. 1995). No single factor is dispositive and the Court must balance all seven factors. *Roth*, 942 F.2d at 631 (internal citation omitted).

1. Degree of Purposeful Interjection

Although the Court has determined that Defendants purposefully availed themselves of the privilege of doing business in California, in assessing reasonableness, the Court nevertheless must also consider the "degree of their intrusion." *Zeigler*, 64 F.3d at 475. As noted, Defendants' course of dealings with Plaintiff in negotiating the Agreement terms and in completing several amendments to the Agreement is evidence of purposeful interjection into California. (*See, e.g.*, Langevin Decl. ¶¶ 17, 21, 24, Exs. B, C, D.) Defendant drafted the Agreement, which contemplated that Plaintiff would pay a total \$2,080,000.00 in six installments for the 26 Airstreams. (Langevin Decl., Ex. A. ¶ 1.4.) Additionally, Plaintiff emphasizes that if Defendants had performed under the Agreement as contemplated, not only would they have delivered the 26 Airstreams to Plaintiff for installation in San Luis Obispo, but Defendants would also be required to provide ongoing maintenance services in California. Even so, this contemplated future conduct does not undermine the fact that, to date,

1 Defendants’ actual presence in California has been minimal. Therefore, the Court finds that
 2 the *degree* of Defendants’ purposeful interjection into California has not been extensive.
 3 Accordingly, this factor weighs in Defendants’ favor.

4 5 **2. Burden on Defendants**

6
 7 Defendants maintain that “all of the material witnesses and associated records that
 8 pertain to Plaintiff’s claims are primarily located in Quebec, Canada where Airstream’s
 9 business is located.” (Motion at 4.) This may be so, but Defendants do not offer any evidence
 10 establishing a significant burden that would be imposed on Defendants by litigating the case
 11 in California.

12
 13 Plaintiff contends that the number of witnesses needed for the defense of this matter
 14 would be limited to individual Defendants Clement and Langevin and Plaintiff intends to call
 15 “several witnesses” regarding the Agreement formation, Plaintiff’s own efforts to “secure
 16 financing, damages, and the circumstances of Defendants’ breach.” (Oppo. at 13.) Plaintiff
 17 also argues that given that Defendants have twice removed this lawsuit to federal court in
 18 California,² filed the instant Motion and “a similar motion to dismiss or transfer venue in San
 19 Luis Obispo County Superior Court,” and propounded written discovery on Plaintiff,
 20 Defendants have not shown any burden they would suffer from litigating in California. (Oppo.
 21 at 13.) In addition, Plaintiff points out that even if the Agreement’s forum selection clause is
 22 enforced, it would still require Defendants to litigate this case “more than 300 miles from
 23 Defendants’ residence in Quebec.” (*Id.*) Finally, Plaintiff points out that in the digital age,
 24 documents are readily transmitted electronically and modern telecommunications and
 25 transportation greatly reduce the burden of interstate litigation. (*Id.* (*citing CE Distrib., LLC*

26
 27 ² In a footnote, Plaintiff contends that Defendants improperly removed the case to California federal court twice.
 28 (Oppo. at 13 n.2 (*citing* 28 U.S.C. § 1406(b)(3)).) Because the parties have not briefed whether the second removal was proper, this Court expresses no opinion on that issue.

1 v. *New Sensor Corp.*, 380 F.3d 1107, 1112 (9th Cir. 2004).) Because Defendants have not
2 adequately addressed reasonableness in either the Motion or the Reply, they have failed to
3 counter Plaintiff's arguments or demonstrate any burden that would make it unreasonable to
4 litigate this case in the instant forum. Accordingly, this factor weighs in Plaintiff's favor.
5

6 **3. Extent of Conflict with Sovereignty of Foreign State**

7

8 While the Court cannot and does not ignore the fact that Defendants reside in Canada,
9 Defendants do not present any argument or evidence that proceeding in California would
10 present a conflict with the sovereignty of Canada. *See Sinatra v. Nat'l Enquirer, Inc.*, 854
11 F.2d 1191, 1199 (9th Cir. 1988). Indeed, as Plaintiff points out, the Agreement's forum
12 selection clause plainly contemplates that any dispute would be litigated in the United States
13 and disputes concerning or arising from the Agreement are to be governed by the Law of New
14 York. (Oppo. at 14, Martin Decl. ¶ 9.) Thus, this factor weighs in Plaintiff's favor.
15

16 **4. Forum State's Interest in Adjudication**

17

18 California has significant interest in the adjudication of this matter. Plaintiff is a
19 California Limited Liability Company, Plaintiff has paid more than \$400,000.00 to
20 nonresident Defendants toward Plaintiff's remodeling project, which, if completed as
21 contemplated, would be a significant business enterprise in the important tourist industry in
22 the mid-coastal city of San Luis Obispo, California. Defendants present no evidence or
23 argument to refute the fact that the forum state has a substantial interest in adjudicating this
24 suit. Accordingly, this factor favors Plaintiff.
25

26 //

27 //

28 //

5. Most Efficient Resolution

Both sides will present witnesses in this case, but Plaintiff argues that the majority of witnesses will be related to its side of the dispute. (Oppo. at 14.) Plaintiff urges that at this juncture, it believes “the only witnesses relevant to Defendants’ case” will be individual defendants Clement and Guillaume. (*Id.*) Defendants, however, may have a different view. That said, given the evidence (or lack thereof) before the Court at this stage, the Court cannot conclude that concerns for efficiency in resolving the case in California favor either party. This factor, therefore, is neutral.

6. Convenience and Effectiveness of Relief for Plaintiff

Plaintiff is a California Limited Liability Company in the business of obtaining financing to refurbish a California motel project. (Oppo at 15; Mavis Decl. ¶ 3.) Plaintiff would undoubtedly find it more convenient to litigate this matter in California rather than New York or Canada. Plaintiff also emphasizes that it has “never traveled to New York or Canada nor was this something contemplated under the terms of the [Agreement].” (Oppo. at 15; Mavis Decl. ¶ 22.) Plaintiff argues that Motel Inn, LLC “has no source of income other than what it can raise through financing” and it “would be prohibitively expensive for Plaintiff” to litigate this case far from California. (Oppo. at 15; Mavis Decl. ¶ 20.) Defendants present no evidence or argument to challenge Plaintiff’s evidence, but insist that they have little connection with California and most of the documents in the case are located in Canada. On balance, this factor weighs slightly in Plaintiff’s favor.

7. Availability of an Alternative Forum

Plaintiff concedes, as it must, that “[a]n alternative forum exists in Albany, New York, pursuant to the forum selection clause” in the Agreement. (Oppo. at 15.) Indeed, Defendants

1 argue that if the Court declines to dismiss the case for lack of personal jurisdiction, the forum
2 selection clause should be enforced and the matter transferred to New York consistent with
3 the forum selection clause. (Motion at 11-13.) Because the Agreement indisputably evidences
4 that the parties agreed to resolve disputes concerning the Agreement in a forum other than
5 California, this factor favors Defendants.

6
7 Having considered each of the seven factors relevant to determining whether the
8 exercise of jurisdiction is reasonable, the Court finds that while one factor is neutral (most
9 efficient resolution) and two factors favor Defendant (*i.e.*, degree of purposeful interjection;
10 and availability of an alternative forum), the remaining factors weigh in Plaintiff's favor
11 (burden on defendant; conflict with foreign state sovereignty; the forum state's interests; and
12 convenience to the Plaintiff). Therefore, the balance tips towards Plaintiff and the Court
13 concludes that the exercise of specific jurisdiction over Defendants in California would be
14 reasonable and does not offend due process. Thus, Plaintiff has met its burden to satisfy all
15 three prongs necessary to establish a *prima facie* case that the exercise of specific personal
16 jurisdiction over Defendants is appropriate in this case.

17
18 Accordingly, the Defendants' Motion to dismiss the case pursuant to Rule 12(b)(2) for
19 lack of personal jurisdiction is DENIED.

20 21 **B. The Venue Selection Clause is Presumptively Enforceable**

22 Defendants request the Complaint be dismissed for improper venue pursuant to Rule
23 12(b)(3), or in the alternative, that the case be transferred, consistent with the Agreement's
24 forum selection clause, to the Northern District of New York pursuant to 28 U.S.C. § 1404(a).
25 (Motion at 11-13.) Defendants argue that venue in California "not only violates the forum-
26 selection clause in the [Agreement] but it also violates the statutory requirements" of 28 U.S.C.
27 § 1391(b). Defendants contend that venue is improper under § 1391(b)(1) because Defendants
28

1 reside in Quebec, Canada, and under § 1391(b)(2) because “any alleged breach of the
2 [Agreement] by Custom Airstream . . . would have occurred in Quebec, Canada, not
3 California.” (Reply at 8.) Finally, Defendants maintain that venue is improper under
4 § 1391(b)(3) “because this Court, or any other court in California, cannot exercise personal
5 jurisdiction over Defendants[.]” (*Id.* at 9.) Defendants urge that, as an alternative to
6 dismissing the Complaint, “this action should be transferred to the Northern District of New
7 York, which is the closest venue to key witnesses and records, pursuant to 28 U.S.C. § 1404(a)
8 and 1406(a).” (Motion at 15.)
9

10 As an initial matter, the Court notes that although venue will not lie in this forum under
11 § 1391(b)(1) because Defendants reside in Canada, the Court is not persuaded that the alleged
12 breach of the Agreement occurred exclusively in Quebec, Canada, not in California.
13 Furthermore, the Court has concluded, at outlined above, that the Court may exercise specific
14 personal jurisdiction over Defendants. As a result, venue is not improper in this district under
15 § 1391(b)(3) and Defendants’ Motion for dismissal based in improper venue under Rule
16 12(b)(3) must be denied. The Court now turns to the parties’ forum selection clause.
17

18 “[F]ederal law, specifically 28 U.S.C. § 1404(a) governs the District Court’s decision
19 whether to give effect to the parties’ forum-selection clause.” *Stewart Org., Inc. v. Ricoh*
20 *Corp.*, 487 U.S. 22, 32 (1988). In *Stewart*, the United States Supreme Court explained that
21 when considering a motion to transfer under § 1404(a), the “presence of a forum-selection
22 clause . . . will be a significant factor that figures centrally in the district court’s calculus.” *Id.*
23 at 29. In *Atlantic Marine*, following on from *Stewart*, the High Court explained that “Section
24 1404(a) . . . provides a mechanism for enforcement of forum-selection clauses that point to a
25 particular federal district . . . [and] a proper application of § 1404(a) requires that a forum-
26 selection clause be ‘given controlling weight in all but the most exceptional cases.’” *Atl.*
27 *Marine*, 571 U.S. at 59-60 (citing *Stewart*, 487 U.S. at 33).
28 //

1 Here, Plaintiff does not challenge the validity of the Agreement’s forum selection
2 clause. Rather, it argues that the clause is “permissive” rather than “mandatory” and, as a
3 result, this Court can exercise its discretion not to enforce the forum-selection clause because
4 it does not “prohibit litigation elsewhere.” (Oppo. at 17.) Plaintiff’s arguments are
5 unpersuasive.

6
7 A valid forum-selection clause “represents the parties’ agreement as to the most proper
8 forum” and its enforcement “bargained for by the parties, protects their legitimate expectations
9 and furthers vital interests of the justice system.” *Stewart*, 487 U.S. at 31, 33. The record here
10 presents no reason to find that the forum-selection clause in the Agreement is unreasonable,
11 that is was secured by any overreaching conduct by Defendants, or is otherwise unenforceable.
12 Nor has Plaintiff presented any exceptional circumstances that warrant ignoring this provision
13 in the Agreement. As explained in *Atlantic Marine*, “the plaintiff’s choice of forum merits no
14 weight. Rather, as the party defying the forum-selection clause, the plaintiff bears the burden
15 of establishing that transfer to the forum for which the parties bargained is unwarranted.” *Atl.*
16 *Marine*, 517 U.S. at 63. Here, Plaintiff has not met its heavy burden to demonstrate that “trial
17 in the chosen forum would be so difficult and inconvenient that [Plaintiff] would effectively
18 be denied a meaningful day in court.” *Argueta*, 87 F.3d at 325.

19
20 Accordingly, the Court, as it must, gives controlling weight to the forum selection
21 clause and will order this case transferred to the Northern District of New York.

22 23 **C. Court Declines to Rule on Rule 12(b)(6) Motion**

24 Defendants’ third motion seeks an order dismissing Plaintiff’s claims against individual
25 defendants Clement and Guillaume for failure to state a claim under Rule 12(b)(6). (Motion
26 at 15-16.) Because the Court has concluded this matter should be transferred to the Northern
27 District of New York, the Court need not reach the merits of the Rule 12(b)(6) motion
28

1 regarding defendants Clement and Guillaume. This should be left for the transferee court.
2 Defendants' Rule 12(b)(6) Motion is hereby DENIED, without prejudice to its re-filing.

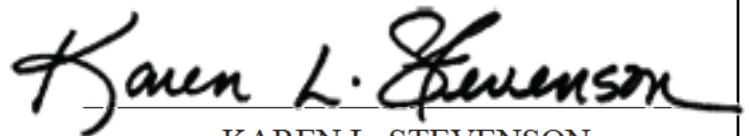
3
4 **CONCLUSION**

5
6 For the foregoing reasons,

- 7
8 (1) Defendants' Motion to Dismiss for Lack of Personal Jurisdiction Pursuant to Federal
9 Rule of Civil Procedure 12(b)(2) is DENIED;
10 (2) Defendants' Motion to Dismiss the Action for Improper Venue Pursuant to Federal
11 Rule of Civil Procedure 12(b)(3) is DENIED,
12 (3) Defendants' request that this action be transferred to the Northern District of New
13 York pursuant to 28 U.S.C. § 1404(a), is GRANTED; and
14 (4) Defendants' Motion to Dismiss Plaintiff's claims against Defendants Steven
15 Clement and Guillaume Langevin Pursuant to Federal Rule of Civil Procedure
16 12(b)(6) is DENIED without prejudice.

17
18 **IT IS HEREBY ORDERED** that this case is **TRANSFERRED** to the Northern
19 District of New York forthwith.

20
21 DATED: March 11, 2021

22
23 

24 KAREN L. STEVENSON
25 UNITED STATES MAGISTRATE JUDGE
26
27
28